APPENDIX A

In the United States District Court
Southern District of Illinois—Southern Division

Norfolk and Western Railway Company, et al., Plaintiffs, v. The Honorable William L. Beatty, Judge, et al., Defendants.	A-Civ-75-0033.

Order

Pursuant to Sections 2281 and 2284, Title 28 of the United States Code, Plaintiffs have challenged the constitutionality of § 707, Chapter 110A of the Illinois Revised Statutes as applied to them by the Defendants so as to limit the participation of Plaintiffs' out-of-state attorneys in pending litigation in the Circuit Courts of Madison County, Illinois. The Plaintiffs' attorneys are licensed to practice law in the State of Missouri, but not in the State of Illinois. They specialize in F.E.L.A. and Jones Act cases and appear from time to time together with local Illinois counsel, on behalf of Plaintiffs to defend Plaintiffs as defendants in numerous cases pending in the state courts of Madison County, Illinois. Defendants have directed Plaintiffs to secure attorneys licensed to practice law in Illinois to serve as their principal counsel in those pending cases. In some instances, Defendants have entered orders striking the names of the out-of-state attorneys of Plaintiffs as counsel of record. These directions and orders, however, permit the out-of-state counsel of Plaintiffs to

be associated in the cases with local counsel, but only in a supporting, consulting or advisory role at trial. They are not prohibited from giving legal or tactical advice before or during the course of litigation or participating in pretrial discovery.

The statute in question, referred to by Defendants as Supreme Court Rule 707, provides that an attorney from any other jurisdiction may, in the discretion of the court, be permitted to participate in the trial or argument of a particular case notwithstanding the general requirements for admission to the Illinois Bar as a prerequisite to practice in the courts of this state. In addition to this rule permitting admission *pro hac vice*, the State also has rules concerning the admission of attorneys seeking their initial license to practice law, and for those seeking to be admitted upon foreign license.

The merits of the issue have been briefed by the parties and the Court has had the benefit of the briefs of the Illinois State Bar Association of Madison County as *amici curiae*. No brief on the merits has been filed for Defendants by the Attorney General of Illinois who had previously appeared in their behalf.

Supreme Court Rule 707 is akin to a statute and is treated as such. The word "statute" as used in § 2281, Title 28, "is a compendious summary of various enactment by whatever method they may be adopted, to which a State gives her sanction," and is construed here to include Rule 707. *American Federation of Labor v. Watkins*, 327 U.S. 582 (1945).

Plaintiffs rely primarily on *Spanos v. Skouros Theatres Corporation*, 364 F.2d 161 (2d Cir. 1966). That case involved a Sherman Act suit in a federal court, and permitted an out-of state attorney, not admitted in that state or district, to collect for his legal services rendered in the case. As the constitutionality of a state statute or Supreme Court rule regulating the practice of law in the state was not challenged, the case is thus distinguishable. Further, some of the language from the opinion relied upon by Plaintiffs was not necessary to the decision of that issue.

In dissenting from the majority opinion, Chief Judge Lumbard states:

> "The opinion of the majority would seem to reduce to zero the power of any court in New York, state or federal, to exercise any control over who practices law in New York when the legal advice sought concerns a 'federal claim or defense', a test which is broad enough to include almost anything in these days of ever-burgeoning federal jurisdiction. Surely it cannot be seriously questioned that courts ought to have the power to regulate who practices before them for their own protection and that of litigants." 364 F.2d at 172.

In *Silverman v. Browning*, 359 F.Supp. 173 (1972), affirmed 411 U.S. 941, the Plaintiffs sought to employ an out-of-state attorney to appear in their behalf *pro hac vice* in civil litigation in a Connecticut state court, but the admission of the out-of-state attorney to represent Plaintiffs was denied under a statute similar to that of Illinois. The majority abstained, but retained jurisdiction pending final determination of the matter of admission by the Supreme Court of that state. The majority disagreed as to their reasons for abstaining, and Smith, Circuit Judge, dissented. In his dissent, Judge Smith stated:

> "The admission to practice before the State Courts in ordinary civil actions before them is a matter for those courts with which we should not unnecessarily interfere."

The dissent goes on to suggest "that a more liberal admission policy more in tune with modern specialization and mobility may be desirable", but that there is a matter for the state to determine. No constitutional basis is found "to grant a civil litigant,

patient or other client the right to compel the admission of non-residents to the practice of law, medicine, or other profession within a state".

Since state rules on *forum non conveniens* govern in F.E.L.A. and Jones Act matters, by analogy state procedure should control here. *Missouri ex rel. Southern Ry. v. Mayfield*, 340 U.S. 1 (1950).

The Illinois statute is not unreasonable. It is not a complete bar to out-of-state lawyers, but permits their full participation in isolated cases on a case-by-case determination. Nor in the present Madison County cases is the participation of out-of-state attorneys completely barred. They may be present and participate with local counsel, though that participation is limited.

That the cases are of federal origin, that the Plaintiffs' attorneys have been permitted to appear without limitation numerous times in the past, that the cases are presently being prepared for trial, that the Plaintiffs' attorneys are specialists regularly representing Plaintiffs in Madison County and elsewhere, that Plaintiffs in the state cases have freedom to select the forum of their choice, that the accidents involved occurred elsewhere, that Plaintiffs' attorneys have caused no disciplinary problems, are not factors singly or cumulatively which require that the Illinois statute be found constitutionally deficient. To view it otherwise would be for this Court to create a limited federal or national bar and to impose it on the states. To do so would be in total disregard of the state's great interests in the control and supervision of the practice of law in its own courts through reasonable requirements for licensing and admission. As suggested by the dissent in *Silverman*, such factors may, however, suggest the desirability of a more liberal exercise of discretion by the judges under the present Illinois statute, or a modification of that statute to fit circumstances such as these, but those matters are considerations for the state and not this Court.

The relief sought by Plaintiffs is denied, and the Defendants' Motion to Dismiss is allowed.

Enter this 2nd day of July, 1975.

/s/ WALTER J. CUMMINGS
Judge, United States Court of Appeals

/s/ ROBERT D. MORGAN
Chief Judge, United States District Court

/s/ HARLINGTON WOOD, JR.
Judge, United States District Court

APPENDIX B

United States District Court
For the Southern District of Illinois
Southern Division

A-Civ-75-0033

Norfolk and Western Railway Company, a corporation; Missouri Pacific Railroad Company, a corporation; Walker Towing Corporation, a corporation; Huffman Towing Company, a corporation; Inland Waterways, Inc., a corporation; Federal Barge Lines, Inc., a corporation, and Inland Tugs Co., a corporation,

Plaintiffs,

v.

The Honorable William L. Beatty, Judge; The Honorable Victor J. Mosele, Judge; The Honorable John Gitchoff, Judge; The Honorable Harold R. Clark, Judge; The Honorable Joseph J. Barr, Judge; The Honorable Fred P. Schuman, Judge; The Honorable Moses W. Harrison, II, Judge; The Honorable John De Laurenti, Judge,

Defendants.

Notice of Appeal to The Supreme Court of the United States

Notice is hereby given that Norfolk and Western Railway Company, Missouri Pacific Railroad Company, Walker Towing Corporation, Huffman Towing Company, Inland Waterways, Inc., Federal Barge Lines, Inc., and Inland Tugs Co., plaintiffs herein, within the time allowed by law under 28 U.S.C.A.

§ 2101(b), hereby appeal to the Supreme Court of the United States from the final judgment dismissing plaintiffs' complaint entered by a three-judge district court in this action on July 2, 1975, which judgment also denied plaintiffs' prayer for injunctive relief. This appeal is taken pursuant to Title 28 U.S.C. Section 1253, permitting direct appeals to the Supreme Court of the United States from orders of a three-judge district court denying, after notice and hearing, an interlocutory or permanent injunction.

Dated this 20th day of August, 1975.

NORFOLK AND WESTERN RAILWAY COMPANY, MISSOURI PACIFIC RAILROAD COMPANY

By /s/ ALBERT E. SCHOENBECK

And /s/ STEPHEN M. SCHOENBECK

And /s/ ROBERT J. COONEY
Their Attorneys
611 Olive Street
St. Louis, Missouri 63101
(314) 621-1740

FEDERAL BARGE LINES, INC. and HUFFMAN TOWING COMPANY, INC.

By THOMPSON & MITCHELL
Their Attorneys

By /s/ WILLIAM G. GUERRI

And /s/ MICHAEL D. O'KEEFE
705 Olive Street
St. Louis, Missouri 63101

INLAND TUGS CO.

By LUCAS & MURPHY
Its Attorneys

By /s/ WILDER LUCAS

And /s/ JOSEPH A. MURPHY
720 Olive Street
St. Louis, Missouri 63101

WALKER TOWING CORPORATION
and INLAND WATERWAYS, INC.

By GOLDSTEIN and PRICE
Their Attorneys

By /s/ MILTON GOLDSTEIN

And /s/ ELMER PRICE
611 Olive Street
St. Louis, Missouri 63101

ALFRED NEWKIRK
GIFFIN, WINNING, LINDNER,
NEWKIRK, COHEN, BODEWES
and NORMONT
Jefferson West Building One
Springfield, Illinois 62705
Attorneys for All Aforenamed
Appellants

Proof of Service

We, Robert J. Cooney, one of the attorneys for Norfolk and Western Railway Company and Missouri Pacific Railroad Company, appellants herein, and a member of the Bar of the Supreme Court of the United States, and William G. Guerri, one

of the attorneys for Federal Barge Lines, Inc. and Huffman Towing Company, Inc., appellants herein, and a member of the Bar of the Supreme Court of the United States, and Joseph A. Murphy, one of the attorneys for Inland Tugs Co., appellant herein, and a member of the Bar of the Supreme Court of the United States, and Elmer Price, one of the attorneys for Walker Towing Corporation and Inland Waterways, Inc., appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 20th day of August, 1975, served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on the several parties thereto, as follows:

On The Honorable William L. Beatty, Judge; The Honorable Victor J. Mosele, Judge; The Honorable John Gitchoff, Judge; The Honorable Harold R. Clark, Judge; The Honorable Joseph J. Barr, Judge; The Honorable Fred P. Schuman, Judge; The Honorable Moses W. Harrision, II, Judge, and The Honorable John De Laurenti, Judge, defendants, by mailing copies in duly addressed envelopes, with first class postage prepaid, to their respective attorneys of record as follows: The Honorable William J. Scott, Attorney General of Illinois, 500 South 2nd Street, Springfield, Illinois 62705; and Tom Price, Assistant Attorney General of Illinois, 500 South 2nd Street, Springfield, Illinois 62705;

On the County Bar Association of Madison County, Amicus Curiae, by mailing copies in duly addressed envelopes, with first class postage prepaid, to its respective attorneys of record as follows: Gerald B. Cohn, 1 Airport Plaza, Bethalto, Illinois 62010, and Robert B. Maucker, 401 Alton Street, Alton, Illinois 62002;

On the Illinois State Bar Association, Amicus Curiae, by mailing copies in duly addressed envelopes, with first class postage prepaid, to its respective attorneys of record as follows:

Howard H. Braverman, 424 South Second Street, Springfield, Illinois 62701, and John T. Roach, 307 Henry Street, P.O. Box E, Alton, Illinois 62002.

/s/ ROBERT J. COONEY
Attorney for Norfolk and Western Railway Company and Missouri Pacific Railroad Company
611 Olive Street
St. Louis, Missouri 63101

/s/ WILLIAM G. GUERRI
Attorneys for Federal Barge Lines, Inc. and Huffman Towing Company, Inc.
705 Olive Street
St. Louis, Missouri 63101

/s/ JOSEPH A. MURPHY
Attorney for Inland Tugs Co.
720 Olive Street
St. Louis, Missouri 63101

/s/ ELMER PRICE
Attorney for Walker Towing Corporation and Inland Waterways, Inc.
611 Olive Street
St. Louis, Missouri 63101